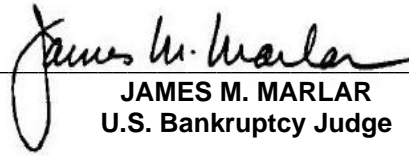


SIGNED.



Dated: December 19, 2008

  
JAMES M. MARLAR  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 7
AGUA NEGRA SPRINGS RANCH, LLC,	)	No. 2:08-bk-00968-JMM
Debtor.	)	Adversary Proceeding #: 2:08-ap-00656-JMM
DALE D. ULRICH,	)	
Plaintiff,	)	<b>MEMORANDUM DECISION</b>
vs.	)	
PHOENIX FINANCIAL SPECIALISTS,	)	
INC.; SANDRA S. LERMAN; and ERIC	)	
LERMAN,	)	
Defendants.	)	
SANDRA S. LERMAN and ERIC	)	
LERMAN dba PHOENIX FINANCIAL	)	
SPECIALISTS, INC.,	)	
Third-Party Plaintiffs,	)	
vs.	)	
PHILLIP BRIAN STONICH,	)	
Third-Party Defendant.	)	

Before this court is the motion of the Third-Party Defendant, Phillip Brian Stonich, to extend the time for him to answer the Third-Party Complaint (Dkt. #19), filed against him by Eric Lerman and Sandra S. Lerman, dba Phoenix Financial Specialists.

Before addressing that motion, however, and to avoid having that Third-Party Complaint portion of the case consume inordinate amounts of attorney time and clients' money, the

1 court feels that it is necessary to confer with Stonich's counsel, and the Lermans' counsel, to address  
2 the following issues:

- 3 1. Under what legal theory do the Lermans believe that an "indemnity"  
4 claim is viable, in view of the Debtor's (Phillip Stonich) chapter 7 case  
5 no. 2:07-bk-06842?
- 6 2. How do the Lermans believe, as a matter of law, that such a legal  
7 theory would entitle them to any kind of judgment that would survive  
8 the Debtor's bankruptcy discharge, and the discharge injunction of 11  
9 U.S.C. § 524?
- 10 3. Under what legal theory do the Lermans believe that they are not  
11 impacted by the automatic stay of 11 U.S.C. § 362(a), which applies to  
12 all creditors of Phillip and Theresa Stonichs' chapter 7 bankruptcy  
13 proceeding?
- 14 4. How do the Lermans contend that they are not bound by the deadline  
15 to file non-dischargeability claims under 11 U.S.C. § 523 in the  
16 Stonichs' individual bankruptcy case (no. 2:07-bk-06842-JMM), which  
17 deadline expired on November 4, 2008? (*See* Dkt. #286, case no.  
18 2:07-bk-06842).
- 19 5. Why don't the Lermans merely file a contingent claim in the Stonichs'  
20 bankruptcy case, and deal with its "allowability" only if there are assets  
21 in that case to distribute?

22 In short, the Lermans should be prepared to explain why the Third-Party Defendant, Phillip Stonich,  
23 should be required to expend monies to defend a lawsuit over a debt or contingent claim that will  
24 be discharged in his bankruptcy case. And, consistent therewith, why the parties should not agree  
25 that the Third-Party Complaint serves no apparent purpose, and why it should not be dismissed, and  
26 be replaced by a simple proof of claim in the Stonichs' bankruptcy case.

1 A hearing on these matters will be held on **January 21, 2009 at 11:00 a.m.** U.S.  
2 Bankruptcy Court, 230 N. First Avenue, Courtroom 602, Phoenix, Arizona. Any briefing on the  
3 court's concerns would be appreciated, and should be filed **five days** prior to the hearing.

4 Until then, this court need not rule upon Mr. Stonich's motion to extend the time to  
5 answer the Third-Party Complaint, and it need not be answered at this time. Once the court discusses  
6 with the parties which direction the case will be taking, Mr. Stonich is protected by the automatic  
7 stay of 11 U.S.C. § 362(a), and need not respond.

8 Parties may appear at the hearing by telephone, by making advance arrangements with  
9 LuAnn Beller, Courtroom Deputy, at (602) 682-4268.

10  
11 DATED AND SIGNED ABOVE.

12  
13 COPIES to be sent by the Bankruptcy Notification  
14 Center ("BNC") to the following:

15 Terry A. Dake  
16 Attorneys for Plaintiff Dale D. Ulrich

17 H. Lee Horner Jr.  
18 Goldstein, Horner & Horner, Attorneys  
19 P. O. Box 2665  
20 Cortaro, AZ 85652  
21 Attorneys for Eric Lerman and Sandra Lerman  
22 dba Phoenix Financial Specialists

23 Robert M. Cook  
24 Attorney for Debtor and for Third Party Defendant Phillip Brian Stonich

25 Dale D. Ulrich, Trustee

26 Office of the U.S. Trustee  
27  
28